

Presented to the Court by the foreman of the  
Grand Jury in open Court, in the presence of  
the Grand Jury and FILED in The U.S.  
DISTRICT COURT at Seattle, Washington.

27<sup>th</sup> August 2003  
By Bruce Rifkin Deputy Clerk

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY R. MARTIN  
J. DAVID SMITH  
JOHN H. WHITE  
EDWARD L. TEZAK

Defendants.

No. **CR03 0370**

RSL

INDICTMENT

The Grand Jury charges that:

COUNT 1

(Conspiracy)

1. From a date uncertain but no later than in or about March 1999, and continuing until the present, within the Western District of Washington and elsewhere, the defendants TERRY R. MARTIN, J. DAVID SMITH, JOHN H. WHITE, and EDWARD L. TEZAK, together with other persons known and unknown to the Grand Jury, did unlawfully, willfully and knowingly combine, conspire, confederate and agree among themselves and with each other to commit certain offenses against the United States, as follows:

A. Introduction

At all times relevant to this Indictment:

1           2.     Holmes Harbor Sewer District ("HHSD") was a municipal corporation and  
2 political subdivision of the State of Washington, located on Whidbey Island, in Island  
3 County, Washington. It was governed by an elected board of commissioners who served  
4 without pay except for reimbursement of nominal expenses. HHSD was primarily  
5 engaged in providing water and sewer services to approximately 200 homes on Whidbey  
6 Island. HHSD had an annual operating budget of approximately \$250,000 and two  
7 employees, a secretary-bookkeeper and a sewer plant manager.

8           3.     On or about October 26, 2000, HHSD issued, at the direction and as part of  
9 a scheme to defraud committed by the respective defendants identified below,  
10 \$20,025,000 in tax-exempt municipal bonds. The purported purpose of the bonds was to  
11 fund a portion of the costs for the development of a commercial office complex called the  
12 Silver Sound Corporate Center. The bonds were purchased by approximately 200  
13 individuals and entities. Those purchasers relied upon representations made orally and  
14 contained in various required disclosure documents including Preliminary Official  
15 Statements ("POS") and an Official Statement ("OS"). The bonds were underwritten by  
16 IBIS Securities, of Walnut Grove, California, which sold them through broker-dealers,  
17 including Prudential Securities, Alamo Capital and others. As set forth below, numerous  
18 representations made orally in connection with the bond issuance and written  
19 representations contained in the POSs and the OS, which were relied upon by the  
20 underwriter, broker-dealers and the bond purchasers, were materially false. The bonds  
21 are currently in default and the undistributed proceeds, in the approximate amount of \$8.5  
22 million, are in the possession of the Island County Treasurer. On May 22, 2003, in a  
23 class action civil lawsuit brought by the bond purchasers, the Island County Superior  
24 Court declared the bond issuance invalid and unenforceable.

25           4.     The Silver Sound Corporate Center was a proposed commercial  
26 development located within the boundaries of the city of Everett, Snohomish County,  
27 Washington. The development plan envisioned a 39.9 acre parcel of property (the "40  
28 Acres") that would be divided into two parts. Twenty-five acres would be owned and

1 used by the developer, using private and independent financing to construct and lease six  
2 office buildings (the "25 Private Acres"). The remaining 15 acres would be purchased by  
3 HHSD with the tax-exempt municipal bond proceeds (the "15 Public Acres"). Bond  
4 proceeds would also be used to build public infrastructure such as sewer, drainage and  
5 roads for the project. The 25 Private Acres and leased commercial office space were to  
6 be assessed amounts sufficient to meet the payment obligations for the HHSD bonds.  
7 The bonds were amortized for full repayment in approximately twenty years.

8         5.       TERRY R. MARTIN was a real-estate developer doing business through  
9 and in the names of various Washington State corporations, including Silver Sound LLC,  
10 Silver Legacy Corporation and Marwest, Inc., along with Silver Inc., a Nevada  
11 Corporation. As set forth more fully below, Mr. MARTIN induced HHSD to issue the  
12 bonds based upon fraudulent representations concerning the purchase terms of the 40  
13 Acres, that the Silver Sound Corporate Center had been pre-leased, that a construction  
14 contract had been finalized, that permits were in place and that private financing had been  
15 committed. Those false representations misled and deceived HHSD, the underwriter, the  
16 broker-dealers and the bond purchasers.

17         6.       J. DAVID SMITH was an attorney licensed to practice law in the state of  
18 Washington and acted as counsel, and a business partner, to Mr. MARTIN. Mr. SMITH  
19 worked on the bond issuance, assisted in the preparation of various documents, and  
20 interacted with the HHSD commissioners, bond counsel, bond underwriter and broker-  
21 dealers. Like Mr. MARTIN, Mr. SMITH induced HHSD to issue the bonds based upon  
22 fraudulent representations concerning the purchase terms of the 40 Acres, that the Silver  
23 Sound Corporate Center had been pre-leased, that a construction contract had been  
24 finalized, that permits were in place and that private financing had been committed.  
25 Those false representations misled and deceived HHSD, the underwriter, the broker-  
26 dealers and the bond purchasers.

27         7.       JOHN H. WHITE, formerly Vice President of Signal Mortgage, and  
28 claiming to act on the behalf of Signal Mortgage, a Washington corporation, claimed to

1 have created Goldman Sig LLC, another Washington corporation which represented to  
2 have loan funds available from Goldman Sachs, Private Client Services. Goldman Sig  
3 LLC purportedly committed loan funds to Mr. MARTIN for the construction of the Silver  
4 Sound Corporate Center and to provide a line of credit guaranteeing repayment of the  
5 bonds in the event of default. Those representations were false. There was no financing  
6 committed and Goldman Sachs was unaware of the transaction. Although Mr. WHITE  
7 was a director and incorporator of an entity named Goldman Sig Inc., there is no entity  
8 named Goldman Sig LLC recognized by the Secretary of State for the State of  
9 Washington.

10 8. EDWARD L. TEZAK, a licensed attorney in the state of Washington,  
11 claimed a relationship with Goldman Sachs and falsely represented that funds were  
12 available to loan to Mr. MARTIN for the construction of the Silver Sound Corporate  
13 Center and for guaranteeing repayment of the bonds. Mr. TEZAK was also a director and  
14 incorporator of Goldman Sig Inc.

15 B. Objects of the Conspiracy

16 The objects of the conspiracy were:

17 9. To unlawfully, knowingly, and willfully, directly and indirectly, by the use  
18 of means and instrumentalities of interstate commerce, and of the mails, use and employ,  
19 in connection with the purchase and sale of securities, manipulative and deceptive devices  
20 and contrivances, by (a) employing devices, schemes, and artifices to defraud; (b) making  
21 untrue statements of material facts and omitting to state material facts necessary to make  
22 the statements made, in light of the circumstances in which they were made, not  
23 misleading; and (c) engaging in acts, practices, and courses of business which operated  
24 and would operate as a fraud and deceit upon other persons, in violation of Title 15,  
25 United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal  
26 Regulations, Section 240.10b-5.

27 10. To knowingly and willfully transmit and cause to be transmitted by wire  
28 communication in interstate and foreign commerce, writings, signs, signals, pictures, and

1 sounds, in furtherance of a scheme and artifice to defraud; and to obtain money and  
2 property by means of false and fraudulent pretenses, representations, and promises, in  
3 violation of Title 18, United States Code, Section 1343.

4 **C. Manner and Means of the Conspiracy and Scheme to Defraud**

5 11. It was part of the conspiracy and scheme to defraud that defendants  
6 TERRY R. MARTIN and J. DAVID SMITH insinuated themselves into a relationship  
7 with the HHSD for the purpose of fraudulently manipulating the HHSD Board of  
8 Commissioners to use its public authority to raise funds for a private development from  
9 which the defendants stood to profit. It was further part of the conspiracy and scheme  
10 to defraud that the HHSD Board of Commissioners was duped into approving an  
11 issuance of \$20,025,000 in municipal bonds and further duped into making various  
12 factual representations about those bonds which were later discovered to be false and  
13 fraudulent.

14 12. It was part of the conspiracy and scheme to defraud that the defendants  
15 Mr. MARTIN and Mr. SMITH concealed from the HHSD, the bond underwriter,  
16 broker-dealers and bond purchasers that Mr. MARTIN acquired the 40 Acres with \$6.2  
17 million of bond proceeds and essentially none of his own funds. Mr. MARTIN  
18 accomplished that by arranging for the \$6.2 million of bond proceeds to go to an  
19 escrow account, at which point the 15 Public Acres were deeded to the HHSD and the  
20 25 Private Acres were deeded to Mr. MARTIN's company, Silver Sound LLC. Non-  
21 disclosure of those terms, and the use of bond proceeds to purchase the entire 40 Acres,  
22 was a material omission and misrepresentation that affected the decisions of the HHSD,  
23 bond underwriter, broker-dealers and bond purchasers.

24 13. It was part of the conspiracy and scheme to defraud that defendants Mr.  
25 MARTIN and Mr. WHITE caused and directed the preparation of an appraisal, upon  
26 which the HHSD, bond underwriter, broker-dealers and bond purchasers relied. The  
27 appraisal contained material misrepresentations and omissions concerning the purchase  
28 terms of the real property, leases, construction financing, and the construction

1 contractor. At Mr. MARTIN and Mr. WHITE's direction, the appraisal was also  
2 modified to omit an as-is valuation of the property, thereby causing another fraudulent  
3 and material omission.

4 14. It was part of the conspiracy and scheme to defraud that the defendants  
5 Mr. MARTIN and Mr. SMITH represented that the office buildings for the Silver  
6 Sound Corporate Center had been pre-leased to Microsoft. The existence of that lease  
7 provided the basis for an appraisal supporting the proposed value of the project and the  
8 source of funds for repaying the bond assessments. In truth and in fact, there was no  
9 lease with Microsoft and those representations were false and fraudulent.

10 15. It was part of the conspiracy and scheme to defraud that the defendants  
11 Mr. MARTIN and Mr. SMITH represented verbally and in a POS, as well as in the  
12 final OS, that a substitute lessee/tenant had committed to renting all 500,000 square feet  
13 of the Silver Sound Corporate Center. In truth and in fact, the lease agreement signed  
14 by that tenant, R. A. King, Inc., of Houston, Texas, was a sham. R. A. King, Inc. had  
15 no ability to occupy 500,000 square feet of office space at the Silver Sound Corporate  
16 Center. Additionally, simultaneous to signing the lease, R. A. King, Inc. was provided  
17 a written side agreement authorizing it to unilaterally cancel the lease for any reason or  
18 for no reason at all, and without consequence. That side agreement was kept secret by  
19 the defendants and not disclosed to HHSD, bond counsel, the bond underwriter, or the  
20 bond purchasers. Additionally, a letter of intent stated that J. Zacket Enterprises,  
21 owned by defendant Mr. TEZAK, was purportedly a division of R.A. King, Inc., and  
22 intended to lease the Silver Sound Corporate Center. That letter of intent was false and  
23 fraudulent. J. Zacket Enterprises was not a division of R.A. King, Inc., and had no  
24 ability to rent the office space.

25 16. It was part of the conspiracy and scheme to defraud that defendants Mr.  
26 MARTIN, Mr. SMITH, Mr. WHITE and Mr. TEZAK represented, orally and in a  
27 POS and the final OS, that lenders had committed a \$43 million construction loan to  
28 finance construction of the six office buildings for the Silver Sound Corporate Center

1 and another \$20.5 million line of credit guaranteeing repayment of the bonds. Those  
2 representations identified the lender as Goldman Sig LLC, purportedly comprised of  
3 Goldman Sachs, Private Client Services, of Chicago, Illinois, and Signal Mortgage of  
4 Everett, Washington. In truth and in fact, there were no loan funds or line of credit.  
5 Goldman Sachs had no involvement and no knowledge of the transaction. Signal  
6 Mortgage, a loan brokerage, had no ability to fund such loans.

7 17. It was part of the conspiracy and scheme to defraud that the defendants  
8 Mr. MARTIN and Mr. SMITH represented verbally and in the POS and OS, that there  
9 was a binding construction contract with Howard S. Wright Construction to build the  
10 six office buildings. A copy of a maximum price contract was provided to the  
11 underwriter and its existence was represented to the HHSD. In truth and in fact, there  
12 was only a preliminary agreement which lacked building plans and costs. That  
13 preliminary agreement was fraudulently altered, after it was signed by Howard S.  
14 Wright Construction, to add a maximum price for the construction contract. That  
15 alteration was unknown and unauthorized by Howard S. Wright Construction.

16 18. It was part of the conspiracy and scheme to defraud that defendants Mr.  
17 MARTIN and Mr. SMITH represented orally and in the POS and OS, that necessary  
18 permits and approvals were in place to allow construction of the Silver Sound Corporate  
19 Center to commence immediately upon issuance of the bonds. In truth and in fact, such  
20 permits and approvals were not in place.

21 19. It was part of the conspiracy and scheme to defraud that Mr. MARTIN  
22 caused and directed the submission of pay requests to the HHSD Board of  
23 Commissioners requesting reimbursement of expenses and costs for prior work that  
24 purportedly had been performed on the public infrastructure portions of the Silver  
25 Sound Corporate Center project. Those pay requests were false and fraudulent in that  
26 much of the represented work had not, in fact, been performed, and supporting  
27 documentation was falsified. The false pay requests were actually a vehicle to directly  
28

1 obtain bond proceeds and to pay other bills of Mr. MARTIN, including amounts he  
2 promised and owed to his co-conspirators.

3 20. It was part of the conspiracy and scheme to defraud that Mr. MARTIN  
4 compromised and manipulated individuals working for the HHSD, on the bond  
5 issuance, and on the development project, including parties and professionals rendering  
6 services. Mr. MARTIN did so with offers of lucrative future work, offers or  
7 agreements to purchase their businesses, and payments of past-due bills or other  
8 payments of money.

9 21. It was part of the conspiracy and scheme to defraud that the bond issuance  
10 was a vehicle through which defendants gained access to bond funds which they  
11 diverted to enrich themselves. The funds paid to defendants and others in connection  
12 with the fraudulent bonds exceeded \$2.5 million, wholly apart from the \$6.2 million in  
13 bond proceeds that were used to purchase the entire 40 Acres.

14 **D. Overt Acts**

15 22. In furtherance of the conspiracy and to promote the objects thereof,  
16 defendants TERRY R. MARTIN, J. DAVID SMITH, JOHN H. WHITE, and EDWARD  
17 L. TEZAK, and other persons known and unknown to the Grand Jury, committed and  
18 caused to be committed, among others, the overt acts described in counts 2-20 of this  
19 Indictment, and the following:

20 **a. False Land Values and Purchase Terms**

21 23. On or about May 7, 1999, a real estate agent acting as nominee for Mr.  
22 MARTIN entered into an agreement to purchase the 40 Acres for \$5.95 million. The  
23 contract was subsequently extended pursuant to extension fees and addendums and  
24 eventually closed on October 26, 2000. The final purchase price was \$6.21 million.

25 24. On a date uncertain, but at some time during the fall of 1999, Mr.  
26 MARTIN made false representations to and misled a commercial real estate agent to  
27 believe that Mr. MARTIN already owned the 40 Acres to be used for the Silver Sound  
28 Corporate Center.



1           25.    On or about November 4, 1999, and again on February 9, 2000, TERRY  
2 R. MARTIN attempted to persuade a commercial real estate agent to write letters  
3 falsely stating an inflated value for the 15 Public Acres.

4           26.    On or about February 1, 2000, TERRY R. MARTIN and JOHN H.  
5 WHITE caused and directed the modification of an appraisal, prepared for Signal  
6 Mortgage, Inc., for the Silver Sound Corporate Center, to delete the statement of  
7 "as is" value for the 40 Acres. That value which was removed from the appraisal was  
8 \$6.21 million.

9           27.    On or about February 9, 2000, TERRY R. MARTIN solicited and  
10 directed the preparation of letters from other real estate agents addressed to HHSD  
11 falsely stating inflated values for the 15 Public Acres to be purchased by HHSD,  
12 including one letter falsely stating a value of \$6.21 million.

13           28.    On or about October 26, 2000, Mr. MARTIN's purchase of the 40 Acres  
14 closed, at Pacific Northwest Escrow, for a final purchase price of \$6.21 million. That  
15 purchase was funded by bond proceeds transferred to escrow in the amount of \$6.21  
16 million.

17           b.    **False Leases**

18           29.    On or about October 1, 1999, TERRY R. MARTIN caused and directed a  
19 commercial real estate agent to write letters falsely and fraudulently representing that  
20 Microsoft intended to lease the Silver Sound Corporate Center.

21           30.    On or about December 1, 1999, TERRY R. MARTIN directed the  
22 creation of a false and fraudulent lease agreement with an undisclosed tenant. The  
23 tenant's identity was blacked-out on the lease agreement. Thereafter, Mr. MARTIN  
24 and J. DAVID SMITH falsely represented that Microsoft was the undisclosed tenant.

25           31.    On or about February 1, 2000, TERRY R. MARTIN and JOHN H.  
26 WHITE caused and directed the issuance of an appraisal expressly predicated upon the  
27 false and fraudulent representation that the Silver Sound Corporate Center had been  
28 pre-leased to an undisclosed tenant with a Triple A credit rating.

1           32.    On or about March 2, 2000, TERRY R. MARTIN provided the false and  
2 fraudulent lease to the underwriter, bond counsel and parties involved in preparation of  
3 the POS.

4           33.    At meetings in June 2000, TERRY R. MARTIN, J. DAVID SMITH and  
5 JOHN H. WHITE falsely and fraudulently represented to potential bond investors  
6 Franklin Templeton and Putnam Investments that the Silver Sound Corporate Center  
7 had been pre-leased to Microsoft but the lease was subject to a confidentiality and non-  
8 disclosure agreement.

9           34.    On or about June 23, 2000, following requests from prospective investors  
10 for disclosure of the tenant, TERRY R. MARTIN prepared and delivered a letter to the  
11 bond underwriter and others stating that the lease had been terminated.

12           35.    On or about September 14, 2000, TERRY R. MARTIN and J. DAVID  
13 SMITH directed a commercial real estate agent to prepare a lease for all six office  
14 buildings of the Silver Sound Corporate Center, to R. A. King, Inc., of Houston,  
15 Texas.

16           36.    On or about September 14, 2000, TERRY R. MARTIN falsely  
17 represented to R. A. King, Inc., that Microsoft might become a sub-tenant at the Silver  
18 Sound Corporate Center.

19           37.    On or about September 21, 2000, TERRY R. MARTIN and EDWARD  
20 L. TEZAK caused and directed a commercial real estate agent to prepare a letter of  
21 intent falsely stating that J. Zacket Enterprises was a division of R. A. King, Inc., and  
22 intended to lease the Silver Sound Corporate Center.

23           38.    On or about September 26, 2000, unknown to the commercial real estate  
24 agent who prepared the R. A. King, Inc. lease, Mr. MARTIN and Mr. SMITH  
25 prepared and delivered to R. A. King, Inc., a secret side-agreement that allowed R. A.  
26 King, Inc. to unilaterally cancel the lease at any time, for any reason or no reason at  
27 all, without consequence.

1           39.     On or about September 28, 2000, TERRY R. MARTIN, JOHN H.  
2 WHITE and J. DAVID SMITH caused and directed the preparation of an amendment  
3 to the appraisal which falsely represented that Mr. MARTIN was negotiating a lease for  
4 the entire Silver Sound Corporate Center on identical terms as the prior confidential  
5 tenant, while failing to disclose the secret side-agreement permitting unilateral  
6 cancellation.

7           40.     On or about October 26, 2000, in connection with the bond issuance,  
8 TERRY R. MARTIN and J. DAVID SMITH falsely represented in the written OS that  
9 R. A. King, Inc. had executed a lease, omitting the material fact that the lease was  
10 accompanied by a secret side-agreement allowing unilateral cancellation of the lease.

11           c.     Construction Contract and Permits

12           41.     During the time intervening between approximately May 1, 2000, and  
13 October 26, 2000, TERRY R. MARTIN and his agents falsely represented to the  
14 HHSD Board of Commissioners, on numerous occasions orally and in writing, that  
15 permits were either in place or would be issued in due course for development of the  
16 Silver Sound Corporate Center and that construction would commence immediately  
17 upon issuance of the bonds.

18           42.     During the time period between May 1, 2000, and October 26, 2000,  
19 TERRY R. MARTIN and J. DAVID SMITH falsely represented to the HHSD Board  
20 of Commissioners that Howard S. Wright construction had executed a contract to build  
21 the Silver Sound Corporation Center for \$43 million.

22           43.     On or about October 11, 2000, TERRY R. MARTIN faxed to the  
23 underwriter a copy of a Howard S. Wright Construction contract that had been falsely  
24 and fraudulently altered, to insert a guaranteed maximum price of \$43 million, after the  
25 document was signed by Howard S. Wright Construction. Howard S. Wright  
26 Construction was unaware of the alteration, did not authorize it, and did not enter into a  
27 guaranteed maximum price contract to build the Silver Sound Corporate Center.  
28

1           44.     On or about October 26, 2000, in connection with the bond issuance,  
2 TERRY R. MARTIN falsely represented in the OS that all necessary entitlements and  
3 permits required for the development had either been issued or would be issued in due  
4 course.

5           **d.     Private Financing**

6           45.     On or about August 2, 1999, and September 15, 1999, JOHN H. WHITE  
7 falsely represented in two letters that Signal Mortgage had arranged and obtained a  
8 commitment for financing the construction of the six office buildings for the Silver  
9 Sound Corporate Center.

10          46.     On or about November 12, 1999, TERRY R. MARTIN and JOHN H.  
11 WHITE signed an agreement, purportedly with Signal Mortgage, reserving a line of  
12 credit in the amount of \$20.3 million.

13          47.     On or about March 10, 2000, JOHN H. WHITE wrote a letter falsely and  
14 fraudulently representing that Signal Mortgage had committed a \$63 million  
15 construction loan for the Silver Sound Corporate Center and a \$20.5 million line of  
16 credit as a guarantee for repayment of the HHSD bonds.

17          48.     On or about March 17, 2000, TERRY R. MARTIN faxed Mr. WHITE's  
18 false and fraudulent letter of March 10, 2000, to bond counsel.

19          49.     On or about April 15, 2000, JOHN H. WHITE, purportedly acting on  
20 behalf of Signal Mortgage, signed two loan agreements in the amounts of \$63 million  
21 and \$20.5 million, committing funds from Signal Mortgage as the lender to Silver  
22 Legacy Corporation.

23          50.     On or about May 9, 2000, EDWARD L. TEZAK and TERRY R.  
24 MARTIN entered into an agreement under which Mr. TEZAK would enable Mr.  
25 MARTIN to verify the availability of funds in the amount of \$20.5 million or more, for  
26 a fee of \$250,000 payable to Mr. TEZAK.

27          51.     On or about May 10, 2000, TERRY R. MARTIN wrote and faxed a letter  
28 to an employee of Wells Fargo Bank asking the employee to contact EDWARD L.

1 TEZAK to confirm the availability of \$63 million, through a line of credit, for the  
2 Silver Sound Corporate Center project.

3 52. On or about May 11, 2000, in a conference call that included the  
4 employee of Wells Fargo Bank, EDWARD L. TEZAK caused an employee of  
5 Goldman Sachs, Private Client Services, to confirm, orally and by letter, that one of  
6 Goldman Sachs' clients had in excess of \$20 million available, thereby creating the  
7 false impression that a line of credit in the amount of \$20.5 was available for the Silver  
8 Sound project.

9 53. On or about May 11, 2000, EDWARD L. TEZAK wrote and faxed a  
10 letter to the employee at Wells Fargo Bank falsely and fraudulently stating that an  
11 additional \$43 million was available, over and above the \$20.5 million.

12 54. On or about May 11, 2000, TERRY MARTIN and EDWARD L.  
13 TEZAK caused the employee of Wells Fargo Bank, based upon the May 11, 2000,  
14 conference call, to falsely confirm by letter that a line of credit in the amount of \$20.5  
15 million was available and another \$43 million loan was also available for the Silver  
16 Sound project.

17 55. On or about May 12, 2000, JOHN WHITE faxed a copy of the May 11,  
18 2000, letter from the employee of Wells Fargo Bank to bond counsel.

19 56. On or about May 12, 2000, EDWARD L. TEZAK falsely confirmed by  
20 letter "... that there are a family of accounts of deposits at Goldman Sachs & Co. (4900  
21 Sears Tower, Chicago, Illinois) that are sufficient to secure a sixty-three million five  
22 hundred thousand (\$63,500,000) line of credit for the Silver Sound Corporation project.  
23 These funds are available at the time for funding of the project by Signal Mortgage,  
24 Inc. and would be distributed through Wells Fargo Bank."

25 57. On or about May 18, 2000, J. DAVID SMITH falsely stated to the  
26 HHSD Board of Commissioners that credit lines in the amount of \$20.5 million and  
27 \$43 million were committed and guaranteed by Goldman Sachs and Signal Mortgage.  
28

1           58.    On or about June 16, 2000, J. DAVID SMITH faxed, to bond counsel, a  
2 false and fraudulent loan agreement representing a loan commitment in the amount of  
3 \$20.5 million from Signal Mortgage.

4           59.    On or about October 17, 2000, J. DAVID SMITH drafted and filed the  
5 incorporation documents for Goldman Sig, Inc., listing JOHN H. WHITE and  
6 EDWARD L. TEZAK as incorporators and directors, which falsely stated that  
7 Goldman Sig, Inc. was created by Signal Mortgage and further falsely stated that  
8 Goldman Sachs, Private Client Services, was available to provide loan funding and  
9 lines of credit.

10          60.    On or about October 25, 2000, TERRY R. MARTIN, J. DAVID SMITH  
11 and JOHN H. WHITE caused and directed the preparation of two construction loan  
12 agreements which falsely and fraudulently represented the commitment of loan funds to  
13 the Silver Sound Corporate Center project.

14          61.    On or about October 26, 2000, in connection with the bond issuance,  
15 TERRY R. MARTIN, J. DAVID SMITH, and JOHN H. WHITE directed and caused  
16 the OS to falsely and fraudulently represent that Goldman Sig, LLC was comprised of  
17 Signal Mortgage, Inc., of which JOHN H. WHITE was Vice President, and Goldman  
18 Sachs.

19          e.    **False Certifications**

20          62.    On or about October 26, 2000, TERRY R. MARTIN falsely and  
21 fraudulently certified the truth and accuracy of information in the OS.

22          63.    On or about October 26, 2000, J. DAVID SMITH falsely and  
23 fraudulently certified the truth and accuracy of information in the OS.

24          64.    On or about October 26, 2000 TERRY R. MARTIN, J. DAVID SMITH,  
25 JOHN H. WHITE, and EDWARD L. TEZAK caused bond counsel, disclosure counsel  
26 and the underwriter to separately certify the truth and accuracy of the information  
27 contained in the OS. In truth and in fact, the OS contained numerous material  
28 misrepresentations and omissions.

1        f.     **Additional Benefits and Distributions of Proceeds**

2        65.    On or about October 26, 2000, TERRY R. MARTIN and Silver Sound  
3        LLC received title to the 25 Private Acres, the purchase of which was funded by \$6.21  
4        million in bond proceeds.

5        66.    On or about October 26, 2000, TERRY R. MARTIN received \$1.24  
6        million dollars in bond proceeds purportedly as reimbursement for funds he previously  
7        expended on the Silver Sound Corporate Center project.

8        67.    On or about October 26, 2000, J. DAVID SMITH received \$100,000  
9        from bond proceeds.

10       68.    On or about October 26, 2000, JOHN H. WHITE was paid a \$215,950  
11       loan fee, from bond proceeds, in connection with the purported construction loan for  
12       the Silver Sound Corporate Center project and the line of credit guaranteeing  
13       repayment of the bonds.

14       69.    On or about October 30, 2000, TERRY R. MARTIN paid \$50,000 to Air  
15       Medical Services, purportedly a charitable organization owned and controlled by  
16       EDWARD L. TEZAK.

17       70.    On or about December 7, 2000, TERRY R. MARTIN presented a  
18       fraudulent pay request to the HHSD Board of Commissioners seeking reimbursement of  
19       an additional \$902,497, which pay request was supported by fictitious and fraudulent  
20       invoices.

21  
22                                    **COUNTS 2-10**

23                                    (Securities Fraud)

24        71.    Sections A (Introduction), C (Manner and Means of the Conspiracy and  
25        Scheme to Defraud) and D (Overt Acts) of this Indictment are incorporated as though  
26        fully set forth herein.

27        72.    On or about the dates set forth below, at Whidbey Island, Washington,  
28        and at other places within the Western District of Washington, and elsewhere, the

1 defendants TERRY R. MARTIN, J. DAVID SMITH, JOHN H. WHITE, and EDWARD  
2 L. TEZAK, together with other persons known and unknown to the Grand Jury,  
3 unlawfully, knowingly and willfully, directly and indirectly, by the use of means and  
4 instrumentalities of interstate commerce, and of the mails, did use and employ, in  
5 connection with the purchase and sale of securities issued to the investors listed below,  
6 manipulative and deceptive devices and contrivances in violation of Title 17, Code of  
7 Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and  
8 artifices to defraud; (b) making untrue statements of material facts and omitting to state  
9 material facts necessary to make the statements made, in light of the circumstances in  
10 which they were made, not misleading; and (c) engaging in acts, practices, and courses  
11 of business which operated and would operate as a fraud and deceit upon other persons,  
12 to wit: The bond purchasers, through the underwriter and their respective broker-  
13 dealers, relied upon information provided verbally by the defendants and upon  
14 information set forth in the Preliminary and Official Statements compiled in connection  
15 with the bond issuance. Those representations and documents, upon which the  
16 underwriter, broker-dealers and purchasers were entitled to rely, contained numerous  
17 fraudulent misrepresentations and omissions. The defendants concealed the true  
18 purchase terms of the 40 Acres and the acquisition of the 25 Private Acres with bond  
19 proceeds. The defendants falsely represented that the entire Silver Sound Corporate  
20 Center had been pre-leased. Defendants falsely represented an appraised value  
21 predicated upon those non-existent leases. The defendants falsely represented a  
22 contract with Howard S. Wright Construction and falsely represented the status of  
23 permits for the project. Finally, the defendants falsely represented the existence of a  
24 line of credit guaranteeing the bonds, falsely represented a construction loan, and  
25 falsely represented Goldman Sachs' participation in those loans.



73. Each purchase set forth below constitutes a representative sample of the purchase and sale of securities through the use by defendants of manipulative and deceptive devices and contrivances, and is a separate count of this Indictment:

COUNT	DATE	PURCHASER	AMOUNT
2	10/19/00	R.C.	\$1,000,000
3	10/19/00	G.S.	\$50,000
4	10/19/00	R.T.	\$4,000,000
5	10/20/00	J.L.R.	\$25,000.00
6	10/23/00	E.S.	\$20,000.00
7	10/23/00	R.V.	\$20,000.00
8	10/26/00	J.M.	\$300,000.00
9	10/26/00	A.B.	\$100,000.00
10	12/7/00	A.D.	\$10,000.00

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

**COUNTS 11-20**

(Wire Fraud)

74. Sections A (Introduction), C (Manner and Means of the Conspiracy and Scheme to Defraud) and D (Overt Acts) of this Indictment are incorporated as though fully set forth herein.

75. On or about the dates set forth below, at Whidbey Island, Washington, and at other places within the Western District of Washington, and elsewhere, the defendants TERRY R. MARTIN, J. DAVID SMITH, JOHN H. WHITE, and EDWARD L. TEZAK, together with other persons known and unknown to the Grand Jury, having devised and intended to devise the above-described scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did, for the purpose of executing such scheme or

1 artifice, knowingly and willfully transmit and cause to be transmitted, by wire  
2 communication in interstate and foreign commerce, the writings, signs, signals,  
3 pictures, and sounds described below, each of which constitutes a representative sample  
4 of wire communications in furtherance of the scheme and artifice to defraud, and is a  
5 separate count of this Indictment:

COUNT	DATE	SENDER	RECIPIENT	DESCRIPTION
11	3/10/00	TERRY R. MARTIN, Mukilteo, Washington	Bond counsel, Sacramento, California	Fax of letter from JOHN H. WHITE confirming loan funds
12	5/11/00	EDWARD L. TEZAK, Everett, Washington	Goldman Sachs, PCS, Chicago, Illinois	Telephone call verifying funds
13	5/12/00	JOHN L. WHITE, Edmonds, Washington	Bond counsel, Sacramento, California	Fax of letter from EDWARD L. TEZAK confirming loan funds
14	5/19/00	J. DAVID SMITH and TERRY R. MARTIN, Mukilteo, Washington	Bond counsel, Walnut Creek, California	E-mail confirming loan funds and Goldman Sachs participation
15	9/26/00	J. DAVID SMITH, Mukilteo, Washington	R. A. King, Houston, Texas	Fax of mutual agreement to terminate lease
16	10/11/00	TERRY R. MARTIN, Mukilteo, Washington	IBIS Securities, Walnut Creek, California	Fax of construction contract
17	10/26/00	US Trust, Los Angeles, California	City Bank/Pacific NW Escrow, Lynwood, Washington	Wire transfer of \$255,520
18	10/26/00	US Trust, Los Angeles, California	City Bank/Pacific NW Escrow, Lynwood, Washington	Wire transfer of \$6.21 million
19	10/26/00	US Trust, Los Angeles, California	Wells Fargo Bank-Silver Sound Legacy/TERRY R. MARTIN, Edmonds, Washington	Wire transfer of \$1.24 million
20	10/26/00	US Trust, Los Angeles, California	US Bank of Washington, Signal Mortgage/JOHN H. WHITE, Everett, Washington	Wire transfer of \$215,950

1 All in violation of Title 18, United States Code, Sections 1343 and 2.

2 A TRUE BILL:

3 DATED: 8/27/2003

4  
5 JT More  
6 FOREPERSON

7  
8 [Signature]  
9 JOHN McKAY  
10 United States Attorney

11  
12 [Signature]  
13 KURT P. HERMANN  
14 Assistant United States Attorney

15  
16 [Signature], For  
17 FLOYD G. SHORT  
18 Assistant United States Attorney